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1   RECORD OF ORAL HEARING

2   UNITED STATES PATENT AND TRADEMARK OFFICE

3   _____

4   BEFORE THE BOARD OF PATENT APPEALS

5   AND INTERFERENCES

6   _____

7   *EX PARTE* TAKAYUKI ASAI

8   _____

9   Appeal 2009-004793
10   Application 09/975,505
11   Technology Center 2400

12   _____

13   Oral Hearing Held: November 17, 2009

14   _____

15 Before LANCE LEONARD BARRY, JAY P. LUCAS, and CAROLYN D.
16 THOMAS, *Administrative Patent Judges.*
17

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19 APPEARANCES:

20 ON BEHALF OF THE APPELLANT:

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1   The above-entitled matter came on for oral hearing on Tuesday,

2   November 17, 2009, at The U.S. Patent and Trademark Office, 600 Dulany

3   Street, Alexandria, Virginia, before Paula L. Lowery, Notary Public.

4

5   THE CLERK: Good morning, Calendar Number 53, Mr. Snader.

6   JUDGE BARRY: Welcome, Mr. Snader.

7   MR. SNADER: Good afternoon.

8   JUDGE BARRY: You have 20 minutes. We'll go ahead and use the

9   timer here. Please begin. We're on the record.

10   MR. SNADER: Thank you. There are a number of rejections on

11   appeal, a single anticipation rejection and a number of obviousness

12   rejections.

13   A common theme among those rejections is that the Wong reference is

14   either the only reference in the case of the anticipation rejection, and the

15   primary reference in the case of all of the obviousness rejections.

16   Although the rejections are all slightly different, they share a common

17   flaw. That common flaw is that the Wong reference doesn't teach the

18   monitoring of a residual memory as claimed in each of the independent

19   claims.

20   Rather, Wong suffers from the same infirmities identified in the

21   application, and that is that Wong sends a static piece of information the size

22   of the memory, rather than the residual memory.

23   I'm going to start out with a brief summary of the claimed subject

24   matter, and then discuss each of the rejections. Specifically, how Wong,

1   and Wong in combination with Ferguson, does not anticipate or render

2   obvious the claimed invention.

3   Claim 1, which is the claim that stands rejected among others, is the

4   anticipation rejection. It recites an object filtering method for filtering an

5   object. That method recites, among other things, comprising periodically

6   monitoring a residual amount of memory capacity in the client during such a

7   session by a plurality of monitoring results.

8   Based on those monitoring results, the client sends a filtering

9   condition to the proxy server. The proxy server, based on this filtering

10 condition, filters objects requested by the clients.

11 By monitoring the residual memory in this way, the claimed method

12 allows objects to be handled by the client more efficiently, specifically in the

13 prior art systems, as discussed on pages 1 and 2 of the specification, if an

14 object was received by the client that exceeded the residual memory capacity

15 of the client.

16 The client would have a couple of choices. It could either delete

17 objects to make room for the object, which may result in deleting necessary

18 or important objects, or could simply discard a requested object. This leads

19 to a certain amount of inefficiency.

20 By monitoring the residual amount of memory and allowing the proxy

21 server to filter objects based on this residual amount of memory, the proxy

22 server can ensure that the objects seen by the client -- there's sufficient

23 memory in the client to handle those objects.

1   JUDGE BARRY: Counsel, in your summary of the invention, which

2   I know you resubmitted, it would have been helpful if you could have done a

3   more specific mapping.

4   For instance, when it comes to the preamble, you just told us to see

5   elements 1 through 4. Obviously -- well, we had to do some figuring out. I

6   assume the terminal is the client, the gateway is the proxy server; but, you

7   see, neither one of those terms was used in the figure.

8   For instance, we're left to see which in your claim the server is. Is that

9   server 3 or server 4 from Figure 1?

10   MR. SNADER: The question was server 3 or 4 from Figure 1?

11   JUDGE BARRY: Right. Which of those corresponds to the claimed

12   server?

13   MR. SNADER: I believe either could correspond to that server, Your

14   Honor.

15   JUDGE BARRY: In future summaries, if you could go to that level of

16   specificity, that would help us understand and help us decide your case

17   better.

18   MR. SNADER: I appreciate the suggestion. I will certainly do so in

19   the future, Your Honor.

20   Turning now to the Wong reference, the Wong reference discloses,

21   and specifically the part relied upon by the Examiner in Column 5,

22   monitoring device capabilities and communicating those between a proxy

23   server and a content server.

24   Now, Wong discloses two examples of device capabilities. That's the

25   type of display and the size of the graphics memory. These generally

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1   correspond to the capability -- the CPI discussed in the background portion

2   of the specification, pages 1 and 2.

3   Importantly, the type of display, of course, doesn't give you any

4   information about the residual memory at all. That simply refers to the

5   number of its color coding, as disclosed in Column 11, lines 17 to 25.

6   Likewise, the size of the graphics memory also does not tell you the

7   amount of the residual memory. It's talking about a total resolution size --

8   the total size -- a static quantity. Support for that can be found in Column

9   11, lines 17 to 25 for Wong.

10   The Examiner states in the Examiner's answer at pages 17 and 18 that

11 one can interpret the graphics memory as being empty. The gist of that

12 argument is that if Wong would disclose the device capabilities, including

13 the size of the graphics when the graphics memory is empty, that would be

14 the amount of residual memory because all of the memory is available.

15   JUDGE LUCAS: Mr. Snader, you said look at Column 11, and you

16 said that that would be the total size available. The idea is we have a device

17 with only so much display memory available, and you're trying to jam a

18 bigger picture in.

19   You're saying that in the Wong reference the specification given to the

20 server that's providing -- the device that's providing the image is the total

21 capacity of the small device, rather than the available space.

22   You said take a look at Column 11, and you pointed to some portion

23 of Column 11 around lines 15 to 30 for the support of that.

24   MR. SNADER: Yes.

1   JUDGE LUCAS: In which Wong was saying that that was the total

2   capacity of the memory, rather than what is available. I don't see this. I'm

3   having trouble, and I'm looking at lines 22 and 23 where it mentions the

4   megabytes.

5   Can you say how you can read this as the total capacity? The wording

6   here is indicating that this device can only display an image size of up to 3

7   megabytes with one color and coding.

8   That sounds more to me like an expression of the free capacity

9   because it's talking about the image that can be put in there, rather than the

10 total capacity of the video phone, or whatever device it is.

11   Please explain your interpretation.

12   MR. SNADER: Well, I think it's two-fold. The first part is I think the

13 size of the actual words themselves, the size of the display, when it

14 references that in Column 5 as an example of the device information that can

15 be sent.

16   JUDGE BARRY: So Column 5, line 58?

17   MR. SNADER: 58, yes.

18   JUDGE BARRY: Size of graphics memory.

19   MR. SNADER: Based on that language alone and in the context with

20 the type of display, I think it's clear from just those words that it is a static

21 information.

22   The second part is looking at Column 11, those words that you've just

23 identified. That phrase indicating that this device can only display an image

24 up to 3 megabytes in size.

1   I would interpret that as being consistent with the other language of

2   this static quantity, just like the type of display. That's talking about the

3   maximum size of the graphics, which would be consistent with the prior art

4   as described in the specification where it sends CPI information that's all

5   static quantities. Total display size, type of display, OS.

6   As further support for the fact this is a static quantity that's being

7   reported, it is important to look at how Wong is communicating this device.

8   If you look at Column 5, it talks about how Wong generates this, which it

9   refers to as receiver end information, which would include in some cases the

10   type of display and the size of the display.

11   What happens is that a table is produced by the proxy server. When

12   the proxy server receives an object request from the client, it matches up that

13   request with the client. Looks up the RHI information in the table and sends

14   it on to the content server.

15   Now, importantly here, the table is constructed and it's described on

16   lines 60 to 61. The table entry for a particular client device can be stored

17   when the device first registers with the ISP.

18   So when it first registers with the ISP, this information is taken from

19   the client by the proxy server and a table is created. If it was, in fact,

20   reporting a dynamic quantity, the amount of residual memory consistent

21   with the Examiner's interpretation of this, this technique wouldn't work.

22   Because you're only taking information once creating a table, and then

23   accessing that table repeatedly each time an object request is sent from the

24   client to the property server.

7

1   JUDGE LUCAS: I can understand why you say that in terms of

2 Column 5.

3   MR. SNADER: Okay.

4   JUDGE LUCAS: The wording that I saw in Column 11 is not

5 wording of the capacity of the phone, according to its specifications; but

6 rather, to repeat, it talks in terms of what the device can handle with regard

7 to an incoming image, "indicating this device can only display an image size

8 of up to 3 megabytes with certain encoding."

9   Now, that sounds to me like a statement of capacity -- available

10 capacity. What it can handle with regard to an incoming image.

11   Why must I abandon the plain wording of this reference on Column

12 11 in order to -- well, why must I abandon it at all?

13   MR. SNADER: Well, I don't think you have to abandon the plain

14 language of Column 11 that you identify.

15   Looking at it, I would read it, as I urged, that that's talking about a

16 static quantity. A total amount of memory, not a residual memory.

17   Now that you've explained your interpretation of it, I can see how

18 Column 11 could be ambiguous. You could interpret it the other way, the

19 way you described.

20   I think it's important that this be read in context with the rest of the

21 disclosure of Wong, including what's in Column 5, what I just talked about.

22 Column 5, to the extent there's some ambiguity here, I think resolves it

23 because it's talking about how you create the table.

24   The way it tells you to create the table and report the size of the

25 display can't be reconciled with the interpretation of language in column 11,

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1   if that language is meant to be interpreted as meaning reporting the residual

2   amount of memory. It just wouldn't work.

3   JUDGE BARRY: In Column 11, lines 19 and 20 refer to looking up a

4   table of device capabilities, which is the same thing as Column 5 refers to in

5   lines 53 -- a table of device capabilities -- implying that they are the same

6   thing.

7   MR. SNADER: Exactly, Your Honor, and I think that's why you need

8   to read this in the context of both what's there in Column 11 and Column 5,

9   which describes how you create that table.

10   Column 5 makes it very clear that you create this table based on

11   polling devices when the device first registers with the ISP. You have this

12   RHI information, which is all static, and you simply pull the information out

13   of this table when the proxy server receives an object request from the client

14   device.

15   Also, going back to this language in Column 5 --

16   JUDGE BARRY: In fact, the Examiner's Answer relies on both those

17   together. It just doesn't pick a Column 11 teaching, but cites Columns 5 and

18   11 as if they are recognizing they're referring to the same thing.

19   MR. SNADER: That's correct. Of course the Examiner doesn't have

20   quite the same interpretation of it as we do.

21   JUDGE BARRY: No.

22   MR. SNADER: The Examiner does, of course, rely on both of those

23   together.

24   JUDGE BARRY: But it's telling us that on pages 3 to 4 of his Answer

25   he relies on them together. In fact -- well, he cites them together.

1   MR. SNADER: That's correct.

2   Reinforcing this interpretation is a fact that the claims call for periodic

3 monitoring. Going back to how this table is created, there's no periodic

4 monitoring of the graphics display of Wong. It's simply polled once, and

5 then the proxy server pulls that off the table.

6   So there's no periodic monitoring. It happens once, a table is created,

7 and that's it.

8   JUDGE BARRY: Counsel, you have about five minutes left. Do you

9 want to go to your Claim 12 because it is a different scope. There's another

10 reference. I'd think you'd want to get those arguments in.

11   MR. SNADER: I would, Your Honor.

12   JUDGE BARRY: Please do that.

13   MR. SNADER: The rejection based on Wong in view of Ferguson

14 suffers from the same general problems as the anticipation rejection based

15 on Wong.

16   Specifically, Wong is deficient with respect to commitment Claims 12

17 and 19 for the same reason we just talked about.

18   The Examiner cites Ferguson for some of the specific limitations in

19 Claims 12 to 19. Ferguson really is dealing with a completely separate

20 problem.

21   Ferguson is dealing with a method of downloading web content during

22 idle time.

23   JUDGE BARRY: Counsel, given our time constraints, let's jump to

24 Column 11 of Ferguson.

25   MR. SNADER: Okay.

1   JUDGE BARRY: Where we see -- very specifically, now we are

2   monitoring a residual amount of memory left. It happens to be a cache

3   memory, and we're sending a notification there.

4   The notification actually didn't mean -- there is no notification sent to

5   a proxy server.

6   JUDGE BARRY: I'm sorry, that's correct.

7   MR. SNADER: So what's happening there is as you've correctly

8   identified Column 11 is talking about the cache manager. The user sets a

9   size limit on the cache.

10   The cache manager, among other functions, monitors this and if the

11   cache hits a certain level it prompts the user to take action, either

12   automatically deleting old web content based on some algorithm, the user

13   deleting web content, increasing size of the cache, or simply ignoring the

14   warning.

15   JUDGE BARRY: Here's where we thought we had it. Since this is a

16   combination rejection, Wong in view of Ferguson, and we now have

17   Ferguson monitoring the threshold of used memory but not necessarily

18   notifying your proxy server about filtering conditions, looking at the

19   combination could Wong's rendering be that filtering condition?

20   MR. SNADER: Could Wong's rendering?

21   I'm sorry, by rendering are you referring -- I don't understand.

22   JUDGE BARRY: If you recall, Wong renders content to fit the

23   memory size of the PDA. So could that be the filtering condition?

24   MR. SNADER: It could not be the filtering condition because it's not

25   based on a plurality of monitoring results of the residual memory.

1   The cache is something entirely different than residual amount of

2   graphics memory. The cache is, you know, some amount of hard drive

3   space that is dedicated to downloaded content.

4   JUDGE BARRY: Right, but what the Examiner doesn't appear to be

5   relying on the cache per se but rather just the teaching of monitoring the

6   threshold. So if that's indeed what the Examiner is relying on, and we

7   combine the reference to his teachings, we now do have monitoring of

8   residual threshold of Wong's memory.

9   So the only hurdle we would have would be notifying of the filtering

10   condition. As you pointed out, Ferguson doesn't do that.

11   MR. SNADER: Yes.

12   JUDGE BARRY: So we are wondering along those lines, could the

13   filtering condition be the way in which Wong renders the image to fit the

14   amount of memory?

15   MR. SNADER: That could not be a filtering condition based on the

16   claims that are currently written.

17   JUDGE BARRY: Why is that?

18   MR. SNADER: Because the Wong reference is disclosing -- looking

19   at the total amount of memory available. So whatever image, among other

20   things type display, size display, so the image is compatible with that.

21   It's not actually filtering based on residual memory size. What you

22   would have here, if you combine these two references, is you would have to

23   have a complete redesign of Wong because the way Wong is set up -- and

24   going back again to how the table is constructed -- Wong would not be

1   capable of performing this function without completely changing the way

2   Wong operates.

3   You no longer have the table. You would have to -- rather than just

4   sending static information, you have to have some type of algorithm or some

5   type of program to monitor the residual memory, and send to this

6   periodically in real time as opposed to simply creating a look-up table when

7   the device first registers with the ISP.

8   JUDGE BARRY: Okay, thank you.

9   MR. SNADER: I hope I addressed your questions.

10   JUDGE LUCAS: We understand your position. Thank you.

11   MR. SNADER: Thank you.

12   (Whereupon, the proceedings were concluded on Tuesday, November

13   17, 2009.)